

FILED

MAR 14 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

KEITH A. BROWN,

Plaintiff - Appellant,

v.

DR. JONES; et al.,

Defendants - Appellees.

No. 04-36159

D.C. No. CV-01-00019-CSO

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Carolyn S. Ostby, Magistrate Judge, Presiding**

Submitted March 8, 2006***

Before: CANBY, BEEZER, and KOZINSKI, Circuit Judges.

Keith A. Brown, a Montana state prisoner, appeals pro se from the district

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Circuit Rule 36-3.

** All parties consented to the jurisdiction of a magistrate judge.

*** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

court's summary judgment in his 42 U.S.C. § 1983 action alleging prison officials were deliberately indifferent in declining to provide treatment for Brown's hepatitis C. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo, *Jones v. Blanas*, 393 F.3d 918, 926 (9th Cir. 2004), and we affirm.

The district court properly granted summary judgment for defendants because Brown failed to submit competent evidence to rebut defendants' expert testimony. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). The expert testimony categorized Brown's hepatitis C as "chronic," but not "chronic active." In the expert's opinion, withholding antiviral therapy did not create any injury or risk of injury, and Brown's relatively normal liver enzyme levels showed the disease was stable and drug treatment was unnecessary. Brown's only evidence was his own contrary opinion regarding the appropriate course of medical treatment. Consequently, Brown failed to raise any genuine issue of material fact. *See Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989).

The district court acted within its discretion to deny Brown's motions to appoint counsel because Brown showed no exceptional circumstances. *See Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991).

Brown's remaining contentions lack merit.

AFFIRMED.